

### **TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture proposes to repeal Article 1.1, Section 1366 in Title 3 of the California Code of Regulations pertaining to Standardization Program assessment rates for the shipments of California fresh fruits and vegetables, hereinafter referred to as commodities.

Notice is also given that any interested person may present statements or arguments in writing relevant to the proposed action at a hearing to be held at 10:00 a.m. on Thursday, July 6, 2006 at the California Department of Food and Agriculture, 1220 N Street, Room 220, Sacramento, CA 95814. Written statements will also be accepted until 4:30 p.m. on July 6, 2006. Please refer to the contact section of this notice for the contact person's name and address information.

Following the public comment period the Department of Food and Agriculture, upon its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Standardization assessment rates listed below were established under the California Food and Agricultural Code, Section 42807 in 1997.

Commodities not subject to mandatory inspection fees - \$0.003 mils per container  
Commodities subject to mandatory inspection fees - \$0.001 mil per container

In 2002, Article 1.1, Section 1366 was adopted that reduced the mil fees by 50%. At the time there was a State wide hiring freeze that allowed the reserve to increase above what was needed for the program. This reduction was at the recommendation of the Standardization Advisory Committee with concurrence from the Secretary of Food and Agriculture. The following new assessment rates became effective July 1, 2002.

Commodities not subject to mandatory inspection fees - \$0.015 mils per container  
Commodities subject to mandatory inspection fees - \$0.0005 mil per container

Pursuant to Section 42812, the Standardization Advisory Committee recommends to the Department to repeal the above-reduced rates and default to the original mil fees established under Section 42807 of the Food and Agricultural Code. It is recommended that this become effective July 1, 2006. The recommendation is based on the fact that the program's fund reserves are being expended and now require an increase to maintain a high level of standardization activities and create an adequate reserve.

The Standardization Advisory Committee is composed of 13 industry representatives of various commodities throughout the State and one county agricultural commissioner. The Committee is advisory to the Secretary of the Department of Food and Agriculture on all

matters relating to the State Standardization Program.

Accordingly, with the repeal of Article 1.1, Section 1366 the mil fee rates would default to three mils (\$0.003) per container and one mil (\$0.001) per container. The new mil fee assessments would take effect and be payable on containers of fresh fruits and vegetables shipped on or after July 2, 2006.

The assessments are used in support of the State Standardization Program, which is responsible for enforcement of laws and regulations establishing quality, maturity, standard containers and packs, size, and container marking requirements for fresh fruits and vegetables. Without the increased assessments the Program would be unable to maintain the current level of enforcement.

Industry-funded programs, such as the Standardization Program, are required to maintain a fund reserve. The reserve would be used to phase out program operations in the event the Standardization Program is terminated. Based on current projections without the increase in fees the reserve would be depleted by June 30, 2007. The Standardization Program, which includes existing law provisions, assessments and an advisory committee, is due to expire on January 1, 2010 unless a later enacted statute extends that date.

Existing Section 42808 mandates a handler of commodities to register with the Department and submit monthly reports and assessments by the last day of the month immediately following the month in which the commodities were shipped. Late payments are subject to a specified monetary penalty.

### **FISCAL IMPACT STATEMENTS**

The Department has initially determined that these proposed regulations would have no effect on increased costs to the Department; however, the proposed fee change would result in an increase of industry-paid revenues of approximately \$950 for each year that the fee is in effect from 547 shippers. The current fee reduction was adopted to reduce excess program fund reserves. The time was needed to reduce the fund reserves to a level that is in line with program needs and was dependent upon when the State-hiring freeze was lifted, and once the freeze was lifted, the time needed to fill vacant positions. At the time, it was estimated the reserve would be reduced in two or three years. The Program has maintained the current level of funding for four years. The State-hiring freeze was lifted and vacant positions have been filled. In addition, the Program increased enforcement activities through additional county contracts for inspection work and opened an inland border station last year to check produce being transported within the State. These activities were recommended by the Standardization Advisory Committee and supported by major industry groups.

The Department has also determined that these proposed regulations will result in no costs or savings on local agencies or on federal funding to the State.

### **EFFECT ON SMALL BUSINESS**

The Department has initially determined that the proposed fee change, as discussed above, would result in minor increase to small business. This is based on our data that shows major shippers that pack over 1,000,000 containers, representing 31% of shippers, will pay 91% of the increased assessments. Small shippers of fewer than 1,000,000 containers would pay 9% of the total increase in assessments.

### **EFFECT ON HOUSING COSTS**

The Department has initially determined that the amendments of the proposed regulation would have no effect on housing costs.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Department has initially determined that these proposed changes would have no statewide adverse economic impact directly affecting businesses, including the ability for California businesses to compete with businesses in other states.

### **ASSESSMENT STATEMENT**

The Department has initially determined that the proposed changes in the regulations would not affect the creation or elimination of jobs in California and would neither create nor eliminate or expand existing businesses in California.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **ALTERNATIVES**

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

### **AUTHORITY AND REFERENCE**

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407, 42807, and 42808 of the Food and Agricultural Code, and to implement, interpret, or make specific Section 42812 of the Food and Agricultural Code, proposes to adopt regulations in Title 3 of the California Code of Regulations.

## **CONTACT**

Inquiries concerning the proposed administrative action may be directed to Steve Patton or Susan Shelton. Inquiries pertaining to the substance of the proposed regulation may be directed to Steve Patton. The contact persons may be reached at the Department of Food and Agriculture, 1220 N Street, Sacramento, CA 95814, phone number (916) 445-2180 ext. 3514 fax number (916) 445-2427. Comments may also be submitted via e-mail at [sshelton@cdfa.ca.gov](mailto:sshelton@cdfa.ca.gov)

## **AVAILABILITY OF TEXT OF PROPOSED REGULATIONS**

A complete copy of existing law and regulations, and the proposed changes may be obtained upon request from the Department of Food and Agriculture. The text of the proposed regulations with any sufficiently related changes clearly indicated would be made available for 15 days prior to adoption.

DEPARTMENT OF FOOD AND AGRICULTURE

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Valerie Brown, Deputy Secretary

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Date